

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL LOUKAS,

Plaintiff-Appellant,

v

JAMES HOARE,

Defendant-Appellee.

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UNPUBLISHED

March 21, 2006

No. 259006

Oakland Circuit Court

LC No. 03-052524-CZ

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court order dismissing his complaint for failure to appear for trial. We vacate the trial court order and remand for further proceedings.

Plaintiff sued defendant for breach of contract and/or malpractice. The trial court issued a scheduling order directing the parties to appear for trial. Because he was incarcerated in a state prison, plaintiff submitted a motion for a writ of habeas corpus pursuant to MCR 3.304. The court did not expressly rule on the motion, and dismissed the case when plaintiff failed to appear for trial.

We review a court's ruling on a motion for involuntary dismissal for abuse of discretion. *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 506; 536 NW2d 280 (1995). A court may issue a writ of habeas corpus directing that a prisoner be brought to testify on the ex parte motion of a party in an action. MCR 3.304(A)(2). Prisoners possess a due process right of reasonable access to the courts that guarantees them adequate, effective, and meaningful opportunities to present their claims. *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 463; 639 NW2d 332 (2001). "Many courts have recognized that an inmate's right of reasonable access to the courts also includes access for general civil legal matters." *Hall v Hall*, 128 Mich App 757, 759-760; 341 NW2d 206 (1983). The right of access to the courts does not include a right to testify in person, although fundamental fairness may require that a prisoner be given some opportunity to present his testimony. *Id.* at 761. "Whether fairness requires the court to allow the plaintiff such an opportunity depends on the particular facts of the case. The issue is essentially whether the plaintiff's interests in presenting his testimony outweigh the state's means necessary for such a presentation." *Id.* The trial court should consider whether the plaintiff's presence would substantially further the resolution of the case, the security risks presented by the plaintiff's presence, the cost of transporting the plaintiff to court, and whether

the suit could be stayed pending the plaintiff's release. *Id.* at 762. "If the court decides to deny the writ, it should consider other possibilities for presenting the testimony." *Id.*

In this case, the trial court failed to rule on plaintiff's motion for a writ of habeas corpus, yet dismissed the case because plaintiff's incarceration prevented him from appearing for trial. Such action interfered with plaintiff's right of access to the courts. Accordingly, we vacate the order of dismissal and remand to the trial court for consideration of plaintiff's motion in accordance with *Hall, supra*.

We vacate and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra